IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6888 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATWARLAL BECHARDAS SOLANKI

Versus

ADMINISTRATOR

Appearance:

1. Special Civil Application No. 6888 of 1994

MR NR TANDEL for Petitioner No. 1

MR SN SHELAT for Respondent No. 1-3

MR YN OZA for Respondent No. 4

GOVERNMENT PLEADER for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/04/2004

ORAL JUDGEMENT

The petitioner, Secretary of Shramjivi Charma Udyog Sahakari Mandali Ltd, had preferred the present Special Civil Application under Article 226 of the Constitution

of India challenging the resolution passed by the Ahmedabad Municipal Corporation by which decision was taken by the Corporation to give contract for removal of carcasses of animals, like dogs, donkeys, cows, buffaloes etc., to private firm and has also prayed for challenging the action of the Municipal Corporation in accepting the tender and giving the work order to the respondent No.4 herein.

2. Shri NR Tandel, learned advocate appearing for the petitioner has submitted that the members of the society were as such doing the business of disposing of carcasses for many years and therefore they were required to be given the work order and the action of the respondent Corporation in giving the work order to the respondent No.4 was absolutely illegal and most arbitrary and without inviting any tender. Shri Tandel has relied upon one communication/letter written by the District Magistrate,Ahmedabad to one Ramjibhai Nathubhai dated 9.4.1956 in support of his claim that they were allotted lands bearing Survey Nos. 81, 82, 83 and 84 near Suvez Farm and therefore on the basis of the aforesaid letter he claims some right in the lands in question.

3. From the bare reading of the communication dated 9.4.1956 it cannot be said that aforesaid Survey Nos. 81, 82, 83 and 84 were allotted to the petitioner for doing some business of removal of carcasses. There is no fundamental right in favour of the petitioner. The petitioner at the relevant time was a proposed cooperative society.

4. Shri Harshadrai Dave, learned advocate appearing on behalf of Ahmedabad Municipal Corporation has relied upon the affidavit-in-reply filed on behalf of the Corporation. He has submitted that earlier the Corporation used to remove and dispose of carcasses through its staff for which the Corporation was required to employ labourers. He has also further submitted that the Corporation was required to provide transportation facilities for removal of carcasses of animals such as dogs, donkeys, cows, buffaloes etc., and the Corporation was required to spend approximately Rs. 24,88,000 a year for discharging the duty of removal of carcasses and in view of the aforesaid fact the Corporation thought it fit to give the work of removal and disposal of the carcasses to the respondent No.4 herein initially for a period of 10 years and accordingly the Standing Committee by Resolution dated 21st October 1992 resolved that initially a contract for 10 years be entered into with the respondent No.4. It is also submitted in the said

affidavit-in-reply that the decision was taken in the interests of the Municipal Corporation and the public at large. Therefore, he has also further submitted that as the contract was initially given to the respondent No.4 for a period of 10 years from 21st October 1992 and that period is already over by afflux of time the present petition has become infructuous. Shri KT Dave,learned AGP appearing on behalf of the State Government has supported the case of the Municipal Corporation.

5. I have heard the learned advocates appearing for the parties. From the bare reading of the communication dated 9.4.1956 upon which reliance has been placed by the petitioner it cannot be said that the land bearing Survey Nos. 81 to 84 is given to the petitioner and/or the members of the petitioner society. It is also fairly conceded on behalf of the petitioner that there is no fundamental right of the petitioner to give the land for the purpose of carrying on business which they were doing for many years. What is challenged in the Special Civil Application mainly is that the resolution passed by the Corporation by which it was decided to give the work for removal and disposal of the carcasses to the respondent No.4. Considering the affidavit-in-reply and the resolution, it cannot be said that the resolution passed by the Municipal Corporation and the decision to give the work for removal and disposal of carcasses to the respondent No.4 is in any way illegal. The decision taken by the Municipal Corporation is in the interests of the Corporation and public at large. Therefore, the petitioner cannot find fault with the resolution. So far as challenging the action of the respondent Corporation with regard to giving the work order to the respondent No.4 though prima facie it seems that at the relevant time the decision was taken to give the work to the respondent No.4 without inviting any tender, but in view of the fact that by afflux of time the period of 10 years is already over, this Court is not inclined to enter into the said question. However, it is clarified that as and when it is decided by the Corporation to give work to any other private agency for removal and disposal of carcasses the same should be in accordance with law and after inviting tender from the public at large.

6. With the above observation, the Special Civil Application is disposed of Rule is discharged with no order as to costs.

rmr. [M.R. Shah, J.]